No. 75-536

Supreme Court of the United States

October Term, 1976

NASHVILLE GAS COMPANY,

Petitioner,

v.

NORA D. SATTY,

Respondent.

MOTION FOR LEAVE TO FILE A BRIEF AMICI CURIAE AND BRIEF FOR THE AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AND INTERNATIONAL UNION, UAW AS AMICI CURIAE

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MOTION BY AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS AND INTERNATIONAL UNION, UAW FOR LEAVE TO FILE A BRIEF AS AMICI CURIAE

The American Federation of Labor and Congress of Industrial Organizations and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America hereby respectfully move for leave to file the attached brief *amici curiae* in the instant case, as provided for in Rule 42 of the Rules of this Court. Counsel for appellees have consented to the filing of that brief, but counsel for appellants have refused such consent.

INTEREST OF THE AMICI CURIAE

The American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO") is a federation of 109 national and international unions, having a total membership of approximately 14,000,000 men and women.

Women comprise a substantial portion of the membership of AFL-CIO affiliated unions.

The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("UAW") is a labor union representing approximately 1,300,000 members, many of whom are women.

The AFL-CIO and the UAW have appeared together previously before this Court representing the interests of women union members in equal employment rights. See, e.g., *Liberty Mutual Life Ins. Co.* v. *Wetzel,* 424 U.S. 737; *General Electric Co.* v. *Gilbert,* ..... U.S. ....., 45 U.S.L.W. 4031.

ISSUES TO BE COVERED

This case involves two policies applicable to women who bear children: denial of accumulated sick leave and loss of accumulated job-bidding seniority. The latter question is one of particular interest to the labor movement, for the seniority principle has long been a union goal in collective bargaining. And the sick leave issue is, in the context of this case, directly linked to the seniority question, since sick leave is itself accumulated on a seniority basis and represents the efforts of employees' work in the past.

The attached brief discusses the validity of these policies under Title VII of the Civil Rights Act of 1964, with particular reference to Section 703(a)(2) of that Act. It is our understanding that the parties and other amici will not concentrate on the meaning and pertinence of that particular subsection. In addition, because of our long experience with both representation of women in the workplace and the seniority principle, we believe we are able to present perspectives on both the meaning and functions of

competitive seniority and the historical association between gender-related stereotypes and pregnancy policies which will not otherwise be covered.

CONCLUSION

Because the attached brief covers an issue not otherwise discussed by the parties and presents background material which will be of use to the Court, this motion should be granted.

Respectfully submitted,

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BRIEF FOR THE
AMERICAN FEDERATION OF LABOR
AND CONGRESS OF INDUSTRIAL ORGANIZATIONS
AND
INTERNATIONAL UNION, UAW
AS AMICI CURIAE

SUMMARY OF ARGUMENT

This case presents directly the question of the validity of two employment practices applied to women who bear children: first, whether women may be denied the use of accumulated sick leave while disabled during the period surrounding childbirth, and second, whether they may be permanently replaced and denied accumulated job-bidding seniority even if they are absent due to childbirth only as long as they are medically unable to work. In Part I, we demonstrate that, while petitioner attempts to cast these practices as the simple disparate treatment of pregnancy related disabilities, in fact the policies are based directly upon the gender-related stereotype that women who bear children want to, and ought to, attend to their domestic responsibilities when they are preparing for childbirth and caring for an infant. We also discuss the ramifications

of the deprivation of seniority for both the women affected and the employer, and show that the deprivation of seniority is both critical to the women's future employment prospects and contrary to the economic and efficiency interests of the employer.

In Part II of the brief we illustrate, first, that precisely the gender-related stereotype underlying the Company's policy here accounts in large part for the fact that women are relegated to low-paying, low-status jobs when they are employed. Second, we argue that deprivation of accumulated job-bidding seniority on the basis of such a stereotype is therefore necessarily directly within the prohibition imposed by § 703(a)(2) of Title VII, and that *Gilbert* v. *General Electric Co.*, ... U.S. ....., 45 U.S.L.W. 4031, upon which petitioner relies, is consequently inapposite; *Gilbert* was litigated and decided solely under § 703(a)(1) and did not even raise questions determinable under § 703(a)(2).

In Part III, we discuss briefly the policy excluding the use of accumulated sick leave for disabilities while on "pregnancy" leave and show that this policy as well violates Title VII. Unlike the exclusion in *Gilbert*, the policy does not merely prevent women from receiving benefits *in addition* to those otherwise available. And, the sick leave policy is inseparable from, and part of the expression of, the same gender-related stereotype which the entire treatment of women who bear children reflects.

ARGUMENT

I.

THE COMPANY'S POLICIES APPLICABLE TO WOMEN WHO BEAR CHILDREN ARE BASED UPON A GENDER-LINKED STEREOTYPE.

This case involves the legality, under Title VII of the

Civil Rights Act of 1964, of certain of petitioner Nashville Gas Company's (hereafter "the Company") personnel policies applicable to women who become pregnant and bear children while employed by the Company. Two aspects of the policies applicable to such women are directly before this Court: first, the refusal to permit women on "pregnancy" leave and unable to work for medical reasons to use accumulated sick leave, available to other employees disabled by a non-occupational sickness or accident; and second, the refusal to allow such women to retain, as other employees absent for medical reasons do,[1] their job seniority for all purposes.

To evaluate the legality of these two policies, however, it

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[1] The Company represents that employees who are absent due to disability are placed on formal leave after their sick leave has been exhausted and do not retain seniority for job bidding purposes. (Br. for Petitioner, at 4, 24). However, the district court found that "employees returning from long periods of absence due to non-job related injuries do not lose their seniority * * *. Only pregnant women are required to take leave and thereby lose job bidding seniority." (App. 45, 51). Similarly, the Court of Appeals noted that: "The employee who is placed on pregnancy leave, *unlike the male employee who is absent due to a nonwork-related disability*, loses her accumulated seniority for job bidding purposes but otherwise retains her accrued vacation and pension seniority." (App. 104, emphasis supplied). And, the record confirms that other employees who have exhausted their accumulated sick leave and remain absent due to disability *are* able to return with full seniority. For example, one employee who was absent due to illness for ten months at a time when she could not have accumulated more than 7½ months sick leave (see App. 97) was returned to her old job with full seniority back to date of hire. (App. 24-25). Thus, the Company's representation that some disabled employees other than pregnant women lose job-bidding seniority is not consistent with either the findings below or the record, and should be disregarded.

is useful to place them in the context of the entire complex of childbirth-related employment policies. For once that is done, it becomes apparent that these policies have no independent purposes or justifications but, instead, are part of an overall program designed with a gender-related stereotype at their core—specifically, that a woman who gives birth to a child will want to, and ought to, remain at home with the infant for a substantial length of time, even though she is physically able to return to work.[2]

The Company provides all of its employees with paid leave for absences due to physical inability to work. (App. 96). The amount of leave and the amount of pay during leave are linked to two factors: (a) seniority with the company[3] (b) the history of the employee's use of sick leave.[4] There is no explicit exclusion from this policy for disabili-

[2] It is our contention that employment-related policies designed on the basis of a gender-related stereotype and affecting solely members of a single sex violate § 703(a)(2) of Title VII where, as with the policy here in question, they "deprive or tend to deprive any individual of employment opportunities, or otherwise adversely affect his status as an employee." (See pp. 26-30 *infra*).

[3] The leave period and pay during leave is calculated according to the following schedule:

Length of Service	Time allowed with Full Pay	One-half Pay
Up to 1 year	1 week	
1 year to 2 years	2 weeks	2 weeks
2 years to 5 years	3 weeks	6 weeks
5 years to 10 years	4 weeks	8 weeks
10 years to 15 years	6 weeks	12 weeks
15 years to 20 years	7 weeks	16 weeks
20 years to 30 years	8 weeks	24 weeks
30 years and over	9 weeks	30 weeks (App. 97).

The amount of leave shown on the table is all that an employee may use within any twelve month period, except if they have earned a

ties caused or related to pregnancy, and it appears that the Company does permit pregnant women to draw upon their sick leave allowance while pregnant, *until* the "pregnancy" leave discussed below begins.[5]

The Company's stated policy as regards a special leave for pregnant women is:

> "In case of pregnancy, an employee, upon written request, may be granted a leave of absence up to one year. It is considered best that the employee leave the Company at least five months prior to the expected birth. If the employee desires to return to work, the company will make every effort to place her in the first available position for which she is qualified and eligible and acceptable by the Department Head in accordance with

premium for non-use of sick leave in past years (see n.4, *infra*). In addition, leave allowance is further linked to seniority in that an employee with less than two years service must ordinarily be out two days before any pay can be collected, and an employee with two to five years service must usually wait one day. (App. 97-98).

[4] An employee may not, apparently, accumulate unused sick leave from one year to the next. However, for each year the employee uses *no* sick leave, he can add one week of full pay leave, up to double the full pay leave to which he is otherwise entitled. (App. 97). Further, an employee who frequently uses sick leave may have a waiting period imposed on later use, and "abuse of the sick leave privilege will be cause for forfeiture of all future rights to paid sick leave." (App. 98).

[5] The stated policy of the Company is not to pay sick leave to employees "*who go on pregnancy leave.*" (App. 13, 32: see also App. 38.) There is no exclusion from the standard sick leave plan for pregnancy-related disabilities occurring before the "pregnancy leave," (App. 97-98) and it appears, for example, that when Ms. Satty was ill for four days in part due to a pregnancy-related problem before her "pregnancy" leave began, she was treated as any other disabled employee. (App. 81-82).

the employment policies." (App. 98).

As the district court noted, while the policy speaks of a "request" for leave, in fact an employee who is having a child *must* take a leave of absence.[6] (App. 33). While the beginning of the leave is determined individually, the Company does reserve the right, exercised in Ms. Satty's case, to require a leave to begin before the employee and her doctor determine it to be necessary, and to consider factors other than the health of the woman and child. (App. 29-30, 63). Further, the Company also has refused to permit women to return to work after childbirth until after a prescribed period has elapsed, even if they would like to and are able to return. (App. 64-65, 86).

Most significantly, a woman placed on leave of absence for childbirth loses all job-bidding seniority she has acquired while working, regardless of the length of her absence, and regardless of whether her absence was solely due to disability or included some period when she could have worked but preferred, for personal reasons including care of the infant, to remain at home. The possible results of this deprivation of accumulated seniority are various.

First, while the Company says it will attempt to return a woman from pregnancy leave to a position should one become vacant, it is clear that the woman will almost never be

[6] This appears to be so even though women are paid for accumulated *vacation* time, although not sick leave, while on leave. (App. 104). Thus, even if a woman had a three-week vacation due her and was able to return to work within three weeks of the date she left to have a child, she would still be regarded as having taken a pregnancy leave, with the consequences for her right to return to her job described below. The result is that an employee absent for three weeks to go fishing would lose no employment rights, while a woman absent to bear a child would.

able to return to her previous position. Any employee of the Company hired up to the time she is ready to return, including those hired while she was on leave, will have preference over her as regards that position. Second, for similar reasons, if a permanent position were available on the day the woman wished to return, it would almost certainly be a position lower in the job progression than that which she left.[7] Third, the woman is likely to be out of work altogether for much longer than she desires to be. Since an appropriate permanent position is unlikely to be available, her former position will have been filled and, as Ms. Satty's situation shows, temporary jobs are exactly that—temporary. Fourth, it is entirely possible that no appropriate job would open up at all during the year's limit on the leave of absence. If so, even the preference over non-employees available to those on leave would disappear and she would be out of work entirely.[8] And fifth,

[7] The only situation in which this would not be so would be if she had not been employed long enough to progress beyond the lowest job category. As this example shows, the seniority-stripping policy actually has the effect of penalizing women *more* the longer they have been with the company.

[8] Although Ms. Satty terminated her employment in order to receive unemployment benefits, it is apparent that had she not done so, she would nonetheless not have been returned to a permanent position. For the Company did not hire *any* new employees in any position for which Ms. Satty was qualified until after her year's leave would have expired. (App. 34). Thus, Ms. Satty's situation does illustrate that the "pregnancy" leave policy can amount to termination of employment rights entirely; and, in fact, two of the other four women on "pregnancy leave" between December, 1972 and July, 1974 never returned as permanent employees and were ultimately terminated "due to reduction of force." (App. 33; see also App. 87).

if the woman *was* able to return to a permanent position, she could not only be relegated to a lower paying, lower status job than that she left but, because she has lost all credit for job-bidding purposes for time worked before leave, she would, for the rest of her career in the company, lose opportunities to individuals first employed after she began work but before she returned from leave. It is likely, therefore, that her relatively low pay status would continue, and that, in the event of layoffs, she would lose her job while others employed for shorter periods would be retained.

The result of these policies is certainly harsh when viewed from the perspective of the woman involved: a lengthy loss of income, the possible loss of employment entirely, and the prospect of a permanent depression of wages and promotion opportunity if she does return to work. Indeed, where a seniority system is in effect,

> "[S]eniority may be the most valuable asset of an employee of long service. It is both the symbol and the realization of a worker's expectations, expectations reinforced by a sense of rightness of the basic principle of length of service." Summers and Love, *Work Sharing as an Alternative to Layoffs by Seniority: Title VII Remedies in Recession,* 124 U. Pa. L. Rev. 893, 902-903 (1976).

The seniority principle, in fact, "expresses in a form appropriate to particular industrial situations the notion that people acquire property-like rights in employment opportunities." Meyers, *The Analytic Meaning of Seniority,* in Proceedings of the Eighteenth Annual Meeting, Industrial Relations Research Assoc. (1966), at 8. Precisely because of its perceived character,

> "Rejection of the principle of seniority where a seniority system has been established [is] disruptive and demoralizing * * *, for it [is] viewed as depriving employees of rights earned in accordance with a just principle. * * * To disregard the order of seniority by giving priority to a junior over a senior worker [is] viewed as taking rights away from one person and giving them to another." *Title VII Remedies in Recession, supra,* at 903-904.

Thus, stripping women who become pregnant of job-bidding seniority necessarily entails more than the loss of particular advantages. It entails also a declaration that the *past* as well as future efforts of women who bear children when employed are to be less rewarded than those of other employees, and that such women, alone of all employees who continue to work except when physically unable to do so, are not entitled to the "expectation that * * * earned rights will not be divested absent a compelling cause." *Id.,* at 903.

At the same time, the result of the Company's policies here at issue is also entirely contrary to its *own* economic and efficiency interests.[9] First, as a result of these policies, experienced employees are displaced in favor of inexperi-

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[9] It is significant in this regard that the Company appears to have instigated the seniority system on its own, and not as the result of collective bargaining. This illustrates what many commentators have noted—that while the development of the seniority principle has been a major concern of unions, the principle has benefits in forwarding efficiency and productivity, raising morale, and assuring consistency in personnel decisions in large organizations which has led many, and probably most, sizeable, nonunionized employers to develop a seniority system. See, e.g., Feller, *A General Theory of the Collective Bargaining Agreement,* 61 Calif. L. Rev. 663, 720-724, 768-769 (1973); National Industrial Conference Board, Inc., *Seniority Systems in Nonunionized Companies* (1950); N. Chamberlain, *Source Book on Labor,* 673, 675-78

enced employees.[10] While in some companies the need for continuity in jobs may be great enough to merit this displacement, the Company here has a policy of ordinarily permitting disabled employees on sick leave to return to their former positions even after long periods of absence.

(1960); H. Vollmer, *Employee Rights and the Employment Relationship*, p. 25 (1960.

For example, one company noted that, in determining layoffs, "we keep the older employees because their attitudes are good. They are very loyal • • •." National Industrial Conference Board, *supra*, at 6. Others stress that they use seniority in making personnel decisions because, since "[a]ccurate determination of merit or competency is not easy • • • except where it is extremely evident on the basis of work record," action based on subtle merit judgments "might • • • lead to endless arguments and grievances," thus disrupting production and creating a sense of injustice among the employees which can hamper efficiency. (*Id.*, at 6, 7, 9). Further,

> "management has accepted seniority because it has recognized that those making the employment decisions may at times be arbitrary and that arbitrariness is costly in terms of maintaining plant morale and retaining valuable employees. [Also], [f]rom the standpoint of • • • top management • • •, the application of seniority at the operating level is simple to oversee and • • • economical to administer." *Title VII Remedies in Recession, supra*, at 901, 902 (1976).

Finally, since "seniority enables an employee to acquire valuable interests by his work, to capitalize his labor and obtain something more than a day's wages for his continued production," (*Id.*, at 902), reliance on that principle serves management interests by providing an incentive to continued employment of the same employees and thereby reducing costly turnover.

[10] In Ms. Satty's case, the district court found that her former job was abolished entirely (App. 52). It is clear, however, that the *policy* is to replace permanently a woman on pregnancy leave, and not to hold her job open no matter how soon she promises to return. (App. 10, 30, 97).

(App. 18-29, 45). Thus, the Company itself apparently recognizes that it is usually more efficient to permit experienced employees to continue in their jobs when they return from absences caused by disability than to permanently replace them, but, for reasons never explained, it does not apply this recognition to women placed on pregnancy leave.

Second, the Company seniority policy itself is plainly based, at least in part, upon the recognition that continuity of employees is desirable and should be encouraged. Turnover is expensive in training costs, and long-term employees are likely to be more loyal to the Company and committed to its interests. (See n. 9, *supra*). Yet, the treatment of pregnant women results in forced discontinuity of employment for a group of employees, with the result that women who intend to bear children have little incentive to remain with the company before their child-bearing begins; they will necessarily lose the right to continue normally in their career once they do have children, and advantages due to continuity before that time will be lost.

Further, the seniority job-bidding system also necessarily recognizes that employees are more likely to be motivated to perform less responsible jobs efficiently if they believe that they have a fair opportunity to advance. Women who, upon return from "pregnancy" leave, are relegated to less responsible jobs than those they left, and will have to work in those jobs for some time before even reaching their former status, are unlikely to exhibit the commitment which a fair advancement system is designed to foster.

Thus, the Company's treatment of women who become pregnant seems entirely contrary to its own interest, and to the purposes of the seniority system it has unilaterally es-

tablished. The explanation for the policy cannot, therefore, lie, as in *Gilbert, supra,* in any legitimate, neutral business purpose such as cost saving or efficiency.[11] Rather, it is apparent that the Company has refused to adopt any policy at all regarding the *disability* caused by a normal pregnancy. Instead, the Company has chosen to provide for what is in essence a child care leave—that is, a period to allow women who have children to stay home to prepare for and take care of the infant for some time without losing *entirely* employment rights.

For a woman who has made the *choice* to forego employment for six months or one year in favor of full-time motherhood, the treatment accorded by the Company may make sense: the length of her absence is likely to be much longer than any sick leave she had accumulated through seniority; the analogy to an education leave, which the Company relies upon heavily (see Br. for Petitioner, at 24), has some validity;[12] and the Company may feel that the very purposes underlying a seniority system—fostering continuity of employment and orderly career development—justify rewarding persons who do not absent themselves for lengthy pe-

[11] Indeed, deprivation of job-bidding seniority not only will not save the Company any money but where, as here, the woman is ultimately terminated because no jobs become available and therefore collects unemployment benefits, the employer's unemployment tax rate can increase, resulting in a cash *loss* due to the seniority policy. See U.S. Department of Labor, *Comparison of State Unemployment Insurance Laws* (rev. 1975), at 2-4 to 2-7 & Tables 200-202.

[12] Both education leave and "child care" leave are voluntary in that they are not precipitated by any physical necessity; and both involve a decision of the individual to pursue an activity other than employment full-time, for personal reasons and, presumably, perceived self-fulfillment.

riods for reasons of personal preference or to pursue another activity.[13]

But it is quite clear on this record that Ms. Satty made no such choice. She had informed the company of her intent to return as soon as she could, she was ready to return to work shortly after her child was born, and she did in fact return six weeks after childbirth, the soonest the Company allowed, to the temporary position available under the Company's policy. (App. 64-65). It is also clear from the record that many employees disabled longer than Ms. Satty were returned to their former status, and that the failure to reinstate here therefore could not have been linked to the length of her absence.

The conclusion is plain: the Company's policy was predicated upon the assumption that women who bear children *would,* or ought to, stay home and care for their infants, and made no particular provision at all for women who did not conform to that stereotype. Since the Company does not force nor, indeed, as far as appears, allow men to take leave to care for children, the policy is based directly upon a gender-linked stereotype, and not upon pregnancy as such nor any special characteristics of pregnancy related disabilities.

II.

PREGNANCY LEAVE POLICIES BASED UPON A GENDER-LINKED STEREOTYPE VIOLATE § 703(a)(2) OF TITLE VII.

A. *History of pregnancy leave policies*

The assumption that women will marry, become pregnant

[13] Of course, other employers may—and many do—decide that they can assure loyalty and efficiency most efficiently by permitting a child-care leave of limited duration to employees with a guarantee of return to the same seniority status, hiring temporary rather than permanent replacements in the interim.

and leave the labor market is at the core of the sex stereotypes resulting in disparate treatment of men and women in the work place. And, conversely, since approximately 80 percent of all women bear children (U.S. Bureau of the Census, "Fertility Expectations of American Women: June 1974," *Current Population Reports,* Series P-20, No. 277 (1975), Table 12), employment policies, such as those here at issue, which permanently and significantly depress the job status of women who bear children while employed, are themselves responsible in large part for the fact that women remain relegated to low-paying, low-status jobs.[14] A brief historical survey will aid, we believe, in perceiving the inextricable connection between pregnancy leave policies which force a discontinuity in employment and loss of a valued, earned employment right, and employment discrimination against women generally.

From early times in this country, the concept of the natural role of woman as that of wife, mother and homemaker has shaped and dictated her treatment in the labor market. Justice Bradley of this Court spoke not only for the concurring justices but for the society of his time when he proclaimed, in 1873, that:

> "[T]he civil law, as well as nature herself, has always recognized a wide difference in the respective spheres and destinies of man and woman * * *. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views which belong, or should belong, to the family

[14] *See* U.S. Department of Labor, *Handbook on Women Workers* (1975), at 4.

> institutions is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband."

(*Bradwell* v. *Illinois,* 83 U.S. (16 Wall.) 130, 141, 21 L.Ed. 442 (1873) (concurring opinion of Bradley, J.).

The view that women belonged at home, rather than in the workforce, persisted into the 1920's. In expression of the prevailing view, women participating in the American Institute of Banking convention in 1923 were told that they were "merely temporary employees" in the nation's banks and businesses and that their goal should be to return home. W. Chafe, *The American Woman* (1972), p. 64. And the Depression of the 1930's only intensified negative attitudes toward working married women; the practice of refusing to hire married women increased, and whole cities campaigned for the firing of working wives, while most state legislatures considered bills to restrict the employment of married women. W. Chafe, *The American Woman,* pp. 100, 108-109; P. Pruette, *Women Workers Through the Depression* (1934), pp. 104-105.

During World War II, the manpower shortage resulted in an unprecedented influx of women into the labor force, and forced a reassessment of policies and practices affecting working women. The Government, through the Department of Labor, played an active role in seeking to make the working world more hospitable to women, including wives and mothers.[15] A primary concern of the Department of

[15] The War Manpower Commission issued a statement of policy on recruitment, training and employing of women workers which recommended, *inter alia,* equal treatment of women workers in hiring, training and wages. See "Policy of War Manpower Commission on Women Workers," *Monthly Labor Review,* Vol. 56, No.

Labor was the prevailing employer practice of terminating women workers upon discovery of pregnancy. See, e.g., C. Silverman, "Maternity Policies in Industry," 8 *The Child* 20, 21 (Aug. 1943); J. Mohr, "The Industrial Nurse and the Woman Worker," (Women's Bureau Spec. Bull. No. 19, 1944), p. 29; "Touchy Problem," *Business Week* (Sept. 25, 1943), p. 80; International Labour Office, *The War and Women's Employment* (Montreal, 1946), pp. 230-233.

In particular, during the war, the Children's Bureau did an investigation of employer reasons for terminating women as soon as they were known to be pregnant. The Bureau found that while many employers responded that they did it to protect the woman's health or because of the diminished efficiency of an employee who is pregnant, and expressed a fear that pregnant women might miscarry and blame her occupation, both reasons were pretexts. For, of all of the employers surveyed, only one reported an incidence of miscarriage, and "[a]ll the medical directors that were interviewed agreed that it is in the first three months of pregnancy that the danger of miscarriage is greatest and that practically all the pregnant women remained at work during this period, as it is unusual for pregnancy to be reported so early." C. Silverman, "Maternity Policies in Industry," *supra*, pp. 21-22.[16]

4 (1943), pp. 669-671; "Standards for Women's Employment in Wartime," *Monthly Labor Review*, Vol. 56, No. 6 (1943), p. 1120.

[16] Dr. Silverman further reported that many employers gave "esthetic and moral" reasons for terminating pregnant women:

> "In many plants it was stated that it was 'not nice' for obviously pregnant women to be working in a factory and that such employment had a bad effect on the male employees, who made it a subject of frequent comment and were distracted from their work." (*Id.* at p. 22).

The degree to which the old stereotypes persist can be seen in the

To combat early dismissal of pregnant women the Woman's Bureau, in conjunction with the Children's Bureau, issued a statement of standards for maternity care and employment of mothers in industry, recommending that pregnancy not be grounds for dismissal. An important aspect of the Bureau's standards was its recommendation that a woman be permitted to return to her former job, or if it were unavailable, another job of equivalent value, at the current wage paid for the job. Accumulation of seniority for 3½ months of the leave and retention of seniority thereafter and the use of sick leave and vacation pay were also recommended. See, U.S. Women's Bureau *Union Provisions for Maternity Leave for Women Members*, Union Series No. 3 (1945); C. Silverman, "Maternity Policies in Industry," *supra*, pp. 23, 24.

Despite its efforts and the support of organized labor, the Women's Bureau made little headway toward the acceptance of its standards by the war's end. "Women Will Stay," *Business Week* (May 12, 1945) pp. 102-103. *Business Week* reported:

> "A survey of 92 midwestern * * * war plants recently revealed that only five recognize maternity as a basis for leave, although in a number of others a contract provision covering illness sometimes is broadly construed as including pregnancy. In many plants, however, pregnancy is a basis for layoffs with resulting loss of seniority, vacation, and other length of employment rights." (*Id.* at 103.)

fact that in this case, Ms. Satty's supervisor, in a conversation regarding when Ms. Satty would begin her "pregnacy" leave, "made a remark that some women when they are pregnant get so big that they look miserable [and] * * * said he would consult [me] when [to] take [my] leave." (App. 81).

And, as the men returned from war, attitudes toward women workers reverted almost overnight to those prevailing before the war. Despite indications that most of the women who entered the labor force during the national manpower shortage wished to continue working (see International Labour Office, *The War and Women's Employment, supra,* pp. 264-267; "Women War Workers' Post-War Job Plans," *Monthly Labor Review,* Vol. 59, No. 3 (1944), pp. 589-590), women were laid off in enormous numbers.[17] Some companies laid off, without regard to seniority, all wives with working husbands. See "Workers' Wives Go First," *Business Week* (Jan. 29, 1944), p. 103; "Employers' Post-war Plans for Women Workers," *Monthly Labor Review,* Vol. 60, No. 6 (1945) p. 1269. The lesson of World War II was clear, indeed: women were still the marginal workers, who, in time of national need, would be called upon to carry on the nation's work, but when the emergency was over, were sent home where they belonged. W. Chafe, *The American Woman,* pp. 177-180.

Nonetheless, the wartime experience permanently changed the work aspirations and patterns of women. Many of those who were laid off from the higher paid war industries found work in traditional "women's" jobs,[18] and their numbers steadily increased in the decades that followed.[19]

[17] See, e.g., "Effects of Cutbacks on Women's Employment," *Monthly Labor Review,* Vol. 59, No. 3 (1944), p. 585; "Women's Tendency to Leave the Labor Market," *Monthly Labor Review,* Vol. 59, No. 5 (1944), p. 1029.

[18] M. Pidgean, "Women Workers and Recent Economic Change," *Monthly Labor Review,* Vol. 65, No. 6 (1974), pp. 668-669.

[19] The labor force participation rates of women rose from 1950 to 1974 from 33.9 percent to 45 percent, and the percentages of workers who are women from 29 to 39 percent. U.S. Department of Labor, *1975 Handbook on Women Workers,* p. 12. The percentages of married women, and of mothers, working increased even more dramatically: in 1950, 24.9 percent of married women were in the work force, while in 1974 43.8 percent of such women were labor market participants. (*Id.,* at 18). And while in 1950 only 20.2 percent of mothers were in the labor force, by 1974 the percentage was 45.7 percent. (*Id.,* at 28). Especially noteworthy, for purposes of this case, is that about one-third of women with children under three, and 37 percent of those with children under six, were in the work force in 1974, while in the immediate post-war years less than 15 percent of women with children under six were in the labor market. (*Id.,* at 26-27).

See, generally, W. Chafe, *The American Woman, supra,* Chapter 8. Yet by 1964, the effective date of Title VII, more than forty percent of companies surveyed by the National Industrial Conference Board still did not even provide *unpaid* maternity leaves of absence for women.

In the period between 1969 and 1973 there was a marked improvement in employer practices. R. Quinn, *et al.,* "Evaluating Working Conditions in America," *Monthly Labor Review,* Vol. 96, No. 5 (1973), pp. 32, 37. In 1973, seventy-three percent of the women workers surveyed by Quinn reported that they were entitled to maternity leave with full reemployment rights as compared to 59 percent in 1969. Twenty-six percent reported the availability of maternity leave with pay as compared to fourteen percent in 1969. *Id.,* at 37, Table 4. See also, U.S. Dept's of Labor and Health, Education and Welfare, *Manpower Report to the President* (1975), p. 72; National Industrial Conference Board, *Profile of Employee Benefits,* Conference Board Report No. 645 (1974), p. 42.

Yet, as this case illustrates, many women are still fired for becoming pregnant, prevented from returning to work

when physically able, denied income maintenance through accrued sick leave when absent, and deprived of accumulated seniority when they are allowed to return. Since the significant majority of women become pregnant at some point in their working lives (see p. 14, *supra*), women in general are deeply affected by employer practices relating to pregnancy and expressive of the assumption that women who bear children are not, and ought not to be, permanently attached to the work force.[20] And the pregnancy rules themselves, in turn, contribute to making this assumption a self-fulfilling prophecy.

B. *Title VII and Seniority Discrimination Against Women who Bear Children*

1. In light of the significant degree to which rules denying critical employment rights to women who bear children, including, as in this case, the right to be employed at all,

[20] Even the small percentage of women workers who never become pregnant do not escape the effects of the employer's concern about pregnancy. Women applying for jobs find they are asked about family plans and what method of birth control they use and, based on the possibility that they might become pregnant, not offered certain jobs or placed in the low paid, dead-end jobs which characterize women's place in the labor force today. See, generally, U.S. Dept's. of Labor and Health, Education, and Welfare, *Manpower Report to the President* (1975), *supra*, pp. 60, 61; *Report of the Twentieth Century Fund Task Force on Women and Employment: Exploitation from 9 to 5* (1975), p. 60. Cf. *Cheatwood* v. *South Central Bell Telephone & Telegraph Company*, 303 F.Supp. 754, 759-60 (M. D. Ala. 1969) (all women denied job of commercial representative, in part because the employer felt that if they became pregnant they could not perform job). Jobs which are part of a promotional ladder in the company are denied women because it is assumed they lack long term job commitment, and the promotions themselves are not forthcoming for the same reason.

account for the lesser status of women in the work force, it is difficult to believe that Congress, when it passed Title VII in 1964 and reiterated, in amending Title VII in 1972, that "discrimination against women is to be accorded the same degree of social concern given to any type of unlawful discrimination" (H.Rep. No. 92-238, 92nd Cong., 1st Sess., p. 5 (1971), did not intend to proscribe *any* employment practices relating to women who bear children particularly. For if that was its intent, the goal of Title VII with regard to sex discrimination, providing "equal opportunity in employment for women," (Equal Employment Opportunity Commission, *Legislative History of Titles VII and XI of the Civil Rights Act of 1964*, p. 3225 (remarks of Rep. Kelly)) would remain perpetually out of reach.

Yet, petitioner here asserts that *Gilbert, supra,* stands for precisely that proposition. *Gilbert* held, the Company asserts, that "*any* personnel policy which excludes pregnancy from coverage but in all other respects treats women and men equally is not in itself discrimination based on sex." (Br. for Petitioner at 14 (emphasis supplied); see also *id.*, at 16, 24).

It is plain that *Gilbert* does not stand for any such broad proposition. Relying upon *Geduldig* v. *Aiello*, 417 U.S. 484, *Gilbert* simply held that where an " 'insurance program which does not exclude anyone from benefit eligibility but merely removes one physical condition—pregnancy—from the list of compensable disabilities' * * * exclusion of pregnancy from coverage * * * is not itself discrimination based on sex." *Gilbert, supra,* ....., U.S., at ....., 45 U.S.L.W., at 4033, 4034. But this conclusion was based not on the supposition that discrimination based on pregnancy or childbirth is *never* a sex-based classification but, rather, on the

quite different proposition that "not * * * *every* * * * classification concerning pregnancy is a sex-based classification." (*Geduldig, supra,* 417 U.S., at 496 n.20 (emphasis suppiied), quoted in *Gilbert, supra.* 45 U.S.L.W., at 4033.)

That *Gilbert,* and *Geduldig,* were narrow decisions not applicable to policies depriving women who bear children of fundamental employment perogatives is shown by the degree to which both opinions stress the importance of insurance principles to the results reached. In *Geduldig,* for example, the Court noted that the contribution rate bore "a close and substantial relationship to the level of benefits payable and to the disability risks insured under the program," (417 U.S., at 493) and consequently refused to require the state "to subordinate or compromise its legitimate interests solely to create a more comprehensive social insurance program than it already has." *Id.,* at 496. And, in *Gilbert* the Court emphasized the similarities of the California insurance scheme it had analyzed in *Geduldig* to the private disability insurance plan then before it. General Electric, it found, was "in effect, acting as an insurer, just as the State of California was acting in *Geduldig.*" (..... U.S., at ....., n. 16, 45 U.S.L.W., at 4035, n. 16). The Court, in particular, looked in *Gilbert* at the "selection of risks covered by the Plan" and concluded that the Plan "is nothing more than an insurance package, which covers some risks, but excludes others." ..... U.S., at ....., 45 U.S.L.W., at 4034-4035.

This analysis, founded on actuarial principles, is appropriate to a disability insurance plan. But such an analysis has no application to a determination of the validity of the employment policy concerning pregnancy involved in this case. For, the Company's totally disparate treatment of

pregnancy here has nothing to do with the actuarial risk analysis underlying *Gilbert* and *Geduldig.* Rather, the seniority rule here at issue affects the employment relationship permanently and fundamentally, rather than temporarily and tangentially. While petitioner, in order to characterize this case as controlled by the actuarial approach of *Gilbert,* refers to *all* its employment practices regarding pregnancy as merely excluding pregnancy coverage from particular "benefits," the notion that a woman who loses her seniority and, along with her job, has merely been excluded from a "benefit" is absurd.

Moreover, even if *Gilbert* stands for the broader proposition that it does not ordinarily violate Title VII to treat a pregnancy-related disability differently from other disabilities, that case certainly does not suggest that an employer can treat pregnancy, childbirth, and the post-natal period as not involving disabilities at all but, instead, as a time when a woman is likely to be and ought to be at home tending to herself and her family. (*See* Part I, *supra*). This Court, in *Gilbert,* in fact *adopted* the district court's finding in *Gilbert* that "normal pregnancy, while not necessarily either a 'disease' or an 'accident,' *was* disabling for a period of six to eight weeks," (..... U.S., at ....., 45 U.S.L.W., at 4032 (emphasis supplied) and proceeded to decide merely that "gender-based discrimination does not result simply because an employer's disability benefits plan is less than all inclusive." (..... U.S., at ....., 45 U.S.L.W., at 4035). Thus, *Gilbert* is completely uninformative upon whether an employer may, as here, treat the period surrounding childbirth not at all as a particular kind of disability period but, instead, as a break in employment not due to disability.

Finally, there is an even more fundamental reason why

Gilbert cannot stand for the broad proposition which petitioners state. *Gilbert* was decided expressly under § 703 (a)(1) of Title VII, and relied heavily upon the language of that section. Section 703(a)(1) declares it an unlawful employment practice for an employer:

> ". . . to *discriminate* against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex or national origin." (Emphasis supplied.)

Indeed, the very premise of the *Gilbert* decision is that *Geduldig* was dispositive with regard to § 703(a)(1) because "to discriminate" must be interpreted in a manner parallel to court decisions construing the Equal Protection Clause. (..... U.S. at .....; 45 U.S.L.W., at 4033-4034).

However, the term "discriminate," upon which *Gilbert* heavily relies, is nowhere used in § 703(a)(2) of Title VII.[21] And here, Ms. Satty charges that Petitioner's employment practices regarding pregnancy and early motherhood violate *both* sections 703(a)(1) and 703(a)(2) of Title VII. Ms. Satty's complaint avers that "[t]he • • • practices of Defendant are in violation of Section 703, Title VII," and alleges that "the policies and practices pursued by the defendant • • • limit, segregate, [and] classify • • • the female workers at Nashville Gas Company in ways which

[21] Section 703(a)(2) declares it an unlawful employment practice for an employer to:

> "limit, segregate or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's race, color, religion, sex or national origin."

• • • the said female workers of employment opportunities [and] otherwise adversely affect their status as employees because of their sex in violation of Title VII." (App. 4, 6). This language makes clear that the allegation was not merely that the pregnancy policies "discriminate" against women under § 703(a)(1) but, in addition, that they are based upon a classification affecting employment opportunities and status because of sex, under § 703(a)(2).

The careful recognition throughout the *Gilbert* opinion that only § 703(a)(1) was being construed (see, e.g., ... U.S., at ....., n.15, 45 U.S.L.W., at 4034, n.15) presumably reflected in part the fact that the disability plan exclusion there at issue was never even *alleged* to violate § 703(a)(2). But this was not a mere pleading error: it is hard to see how exclusion of one disability risk from an insurance plan precludes any employee from any employment opportunities or otherwise affects his or her status as an employee. The direct effect of such an exclusion is the only loss of income for a period one is not at work; such an exclusion has no predictable effect upon either future opportunities or job status.

Here, however, there can be no dispute that the policies applied to women who bear children *do* classify employees in a way which *both* deprives them of employment opportunities and adversely affects their status as employees. For, it was stipulated in this case that, as a result of the loss of competitive seniority, Ms. Satty lost several jobs she was qualified for and would have obtained had she retained her accumulated seniority. (App. 33). And it is apparent, as explained in Part I, that the loss of accumulated competitive seniority will have continuing effects on the employment opportunities of even those few affected women who

do return to permanent positions. Those women will continue to lose the right to promotions they would otherwise obtain and be in danger of lay-offs they could otherwise survive. Further, as also explained in Part I, loss of accumulated competitive seniority entails surrendering to another the most prized aspect of job status available in companies which follow the seniority principle. Indeed, since seniority is a status acquired by one's *past* efforts, loss of seniority involves a loss of a valued right already earned.[22] Thus, it is clear that *Gilbert* cannot be controlling in this case, since it construed only one subsection of Title VII, while another was both alleged here in the complaint and pertinent to the issues at hand.

2. The question, then, is whether the seniority principle applied by the Company to women who become pregnant is one which "in any way * * * deprive[s] or tends to deprive [women] of employment opportunities or adversely affect [women's] status as employees because of * * * sex." If so, there would be a clear violation of § 703(a)(2).

This Court has previously explained that an entirely *neutral* employment policy which has a disparate impact

[22] It is, in fact, certain that Congress, in enacting Title VII, while careful to preserve in effect seniority systems based upon neutral, non-discriminatory principles (see § 703(h) of Title VII, 42 U.S.C. § 2000e-2(h)), intended to prohibit seniority systems in which race, color, religion, sex or national origins were *directly* relevant to one's status within the system. "If [a] seniority rule itself is discriminatory, it would be unlawful under Title VII. If a rule were to state that all Negroes must be laid off before any white man, such a rule could not serve as the basis for a discharge subsequent to the effective date of the title." (110 Cong. Rec. 7207 (1964), quoted in *Franks* v. *Bowman Trans. Co.*, 424 U.S. 747, 760.)

upon a protected class can in certain circumstances violate § 703(a)(2) if it is not justified by a business necessity. *Griggs* v. *Duke Power Co.*, 401 U.S. 792. If this is so, then the seniority policy of the Company, based not on a neutral principle but on a directly gender-linked stereotype, must also violate that subsection.

Here, there are three related factors which demonstrate that the employment policy is not based on a neutral classification but, instead, on one directly gender-linked. First, the classification principle is such that, by definition, only women can be within the deprived class. Second, this is so because of the most fundamental aspect in which women differ from men—their capacity to bear children. And third, the use of the pregnancy classification with regard to job-bidding seniority is, as illustrated previously, the direct result of an antiquated view of the role of women generally [23] and their domestic responsibilities.

Given these circumstances, it appears plain that if § 703(a)(2) reaches the *Griggs* situation, where a mere *disparate* effect results from a *neutral* employment policy, it necessarily reaches the situation where a much more pronounced and direct-gender linked effect occurs because of a *non-*

[23] Further, the policy has at least indirect *effects* on the careers of all women. For a large majority of women do bear children at some time; and even those who do not are likely to be affected in their career prospects by the knowledge that they are, as long as they *could* bear children, in effect receiving less security for their present work than men. In addition, as noted previously, the very fact that most women will bear children becomes, where a policy of forced discontinuity of employment is in effect for those who do, a factor which justifies for employers a reluctance to place woman in responsible positions where continuity is important. (See n....., *supra*).

neutral employment policy, with potential impact upon the *entire* protected class.

It is instructive, in this regard, to consider recent equal protection cases concerning gender-based discrimination, since *Gilbert* declared such cases useful in construing Title VII. These cases declare the general principle that where a policy is based upon "outdated misconceptions concerning the role of females in the home rather than in the marketplace," policy makers must "choose either to realign their substantive laws in a gender-neutral fashion, or * * * adopt procedures for identifying those instances where the sex-centered generalization actually comported to fact. See, e.g., *Stanley* v. *Illinois* [405 U.S. 645]; cf. *Cleveland Board of Educ.* v. *LaFleur,* 414 U.S. 632." *Craig* v. *Boren,* ..... U.S. ....., ..., 45 U.S.L.W. 4057, 4059.[24]

In particular, the equal protection cases have declared that a "gender-based generalization cannot serve to justify the denigration of the [employment] efforts of women" who do not conform to the generalization, even where that generalization "is not entirely without empirical support." *Weinberger* v. *Wiesenfeld,* 420 U.S. 636, 645. See also *Califano v. Goldfarb,* .....U.S. ....., 45 U.S.L.W. 4237. If it is a violation of equal protection to adopt a policy which "results in the efforts of female workers producing less protection for their families than is produced by the efforts of men" (*Weinberger, supra,* 420 U.S., at 645), it must also be such a violation to adopt a policy which results in

[24] The citation of *LaFleur* in *Craig* is particularly pertinent here. For in *LaFleur,* the gender-related stereotype was applied in a policy which directly affected only women who became pregnant. See also *Turner* v. *Department of Employment Security,* 424 U.S. 44.

less protection for the women *themselves,* as the seniority policy here does. And, as noted, the policy here *is* based precisely upon a refusal to recognize that the notion that women will remain out of work due to childbirth to attend to domestic responsibilities, rather than simply for the period they are disabled, does not apply to all women.

Thus, the equal protection cases to which *Gilbert* refers us support the proposition here asserted: that it is necessarily a violation of § 703(a)(2) to adopt a policy which is based upon a gender-related stereotype and which affects a group which is necessarily totally female.[25] And, while the equal protection cases do recognize that gender-based discrimination can be justified by "important governmental objectives * * * [if] substantially related to achievement of those objectives," (*Craig, supra,* ..... U.S., at ....., 45 U.S.L.W., at 4059), no justification whatever has been state for the seniority deprivation here. In fact, the seniority policy here, as explained in Part I, is contrary to the Company's *own* economic and efficiency interests and could result in an out-of-pocket *loss* to the company, without any gain whatever. The Company's defense here, which amounts to the assertion that it may treat women who bear children in any way it chooses, would not prevail even in an equal

[25] Indeed, given the fact that a majority of women are *directly* affected by policies concerning pregnancy, the gender-based violation is even more clear than in *Weinberger.* For in that case only a relatively small subgroup of women was likely to actually be affected—those who die and leave dependent children. Clearly, the fact that a policy based on a gender-related stereotype affects only part of the female population does not render it any less gender-based discrimination. Cf. *Phillips* v. *Martin-Marietta Corp.,* 400 U.S. 542.

protection case in which only a rational basis test were applied, and it cannot therefore prevail here, where a more stringent rule applies.[26]

III. The Company's Refusal To Allow Women Who Bear Children To Use Accumulated Sick Leave For Disabilities During The Childbirth Period Violates Title VII.

The sick leave policy at issue here may, on first glance, appear to be similar enough to the *Gilbert* situation that the analysis in the previous section would not apply. It is our contention, however, that at least for this employer, the interrelationship between the sick leave policy and the seniority policy is so clear that if, as we contend, the seniority policy violates § 703(a)(2), the sick leave policy does also.

To see why this is so, it is useful, first, to illuminate ways in which the Company's sick leave policy does differ significantly from that in effect in the General Electric Company. As Nashville Gas describes its own system, it "does not have any disability insurance plan." (App. 13). Rather, employees *earn* a given number of sick leave days to use in the future, depending upon how long they remain continuously employed, and how often they use sick leave while employed. (See Part I, *supra*).

As a result of this scheme, if women were permitted to use accumulated sick leave for all absences caused by preg-

[26] Section 703(e), which permits gender-based discrimination in employment where sex is a "bona fide occupational qualification reasonably necessary to the normal operation of that particular business" would, in our view, be the only appropriate defense to discrimination which, as here, is based on a gender-based stereotype. No such defense has been asserted, nor can we imagine how, on this record, such a defense could prevail.

nancy-related disabilities, there is no meaningful sense in which they could be said to have received a benefit *additional* to that accorded men and women who do not become pregnant. For, sick days, once used, are forever expended, and cannot be used again should a new disability occur. For example, if a woman uses all her accumulated sick leave to cover a pregnancy-related disability, she would have no days left that year should she later break her leg and be unable to work; while a man similarly situated except for the fact that he is not subject to the risk of pregnancy would have sick days available to assure income if he broke his leg.

Under the General Electric plan, the situation would be quite the opposite: because there is no absolute limit upon the number of sick days which may be taken in one year but, rather, only upon the number of days for which disability will be paid for a single disability (see ..... U.S. at ....., 45 U.S.L.W., at 4032), the woman described above *could* receive benefits for *two* disability periods, while the man would receive benefits only for one. Thus, while there is in sense in which covering pregnancy in the *Gilbert* situation entails an *extra* benefit for women, no such *extra* benefit would be conferred under the employer's scheme here.

Moreover, in the General Electric Company, since the payments available for disability are not limited except with respect to each disability period, they are not a reward for successfully completed past service. Here, the limits themselves are set primarily in accord with the length of past service, so that sick leave is a form of deferred compensation allocated in accord with the amount of time worked.

For these reasons, the Company's sick leave policy must be regarded as part of, rather than separate from, its policy

of stripping women who bear children of competitive job seniority. For, all employees of the Company who receive sick pay while disabled *also* retain job-bidding seniority and, indeed, are ordinarily returned to their last job; while all employees who are on personal leave without pay *lose* job bidding seniority, and their right to sick leave pay while on leave. Thus, the right to be paid for days not worked due to disability is a direct concommitant, in this Company, of the seniority system, both in terms of how many days pay will be allowed and in terms of whether the person is considered to be in active employment or on a leave status.

From this analysis, it becomes plain that the same gender-based stereotype which accounts for depriving women who bear children of competitive job seniority also underlies the sick leave policy. Nashville Gas denies sick benefits during "pregnancy" leave not because it has chosen to exclude one kind of disability risk from its income protection plan, but because it has refused to regard the childbirth period as one which, for some women at least, is nothing more than a disability period.

Whether or not the Company could decide, for gender-neutral reasons, to simply exclude all pregnancy disabilities from the sick leave program is therefore not the issue here. For the declared company policy is to pay sick leave to all persons, up to prescribed limits based on past service, who are unable to work due to disability while on active service. Women on "pregnancy" leave are excluded from that policy because they are, due to the seniority policy which, in our view, violates § 703(a)(2), not in active service, and not because of the nature or cost of their particular disability. Therefore, the denial of sick leave is simply part of the

§ 703(a)(2) violation and must be proscribed along with the rest.[27]

[27] Indeed, as noted, the Company does not deny such pay to women for pregnancy related disabilities *until* they are placed on "pregnancy" leave and therefore, because of the deprivation of their jobs and of job-bidding seniority, no longer on active service.

CONCLUSION

For the reasons stated above, the judgment below should be affirmed.

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